

CVM Here, CVM There: The European Commission in Bulgaria's Legal Wonderland

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On 13 June 2019, Bulgaria's Minister of Justice Danail Kirilov [declared](#) that he would resign unless the Cooperation and Verification Mechanism (CVM) to which Bulgaria was subjected was lifted before the end of the Juncker Commission's term (October 2019). This statement comes in the middle of a highly controversial reform proposed by Kirilov. The reform is one of the key arguments Bulgaria intends to use to persuade the European Commission that the CVM should be terminated this year.

Public statements by European Commissioners and Bulgarian ministers suggest that, similarly to Alice from [Alice's Adventures in Wonderland](#), the European Commission is lost in Bulgaria's Legal Wonderland. However, it does not want to wake up for the sake of *realpolitik*. Meanwhile, as recently [argued](#) by Simeon Stoychev in light of Kirilov's suggestion for reform, Bulgaria's judicial independence is about to end "not with a bang but with a whimper".

A CVM Deprived of Purpose, A European Commission Lost in Legal Wonderland

When Bulgaria acceded to the EU in 2007, it did not fulfill all accession criteria. That is why it was placed under the CVM which set six key benchmarks that Bulgaria had to satisfy to catch up with other EU Member States: judicial independence, legal framework, continued judicial reform, high-level corruption, general corruption, and organized crime. As years passed, the CVM lingered on. The European Commission got lost in Bulgaria's Legal Wonderland and progressively [turned](#) the CVM into an exercise in flattery while Bulgaria's rule of law became "[curiouser and curiouser](#)" (*The expression from Alice's Adventures in Wonderland is often used as a synonym for "increasingly strange"*). Unlike Alice who said she "[couldn't] believe impossible things", it appears the European Commission forced itself to believe the misrepresentations about progress made by Bulgaria's government.

In 2016, Jean-Claude Juncker [affirmed](#) that the CVM would be lifted for Bulgaria before the end of 2019. Prior to this, Juncker [had referred to](#) Borissov as his "golden boy". Borissov [embraced](#) mandatory refugee quotas, so one may wonder if this was the consideration for Juncker's initial promise to terminate the CVM. In 2018, to the [surprise](#) of those following the rule of law decline in Bulgaria, the European Commission [provisionally closed](#) three of the benchmarks: judicial independence, the legal framework, and the fight against organized crime. Frans Timmermans, the Commissioner responsible for the Rule of Law, even [announced](#) the mechanism

could be lifted before the end of this Commission's term if progress continued, essentially sticking to Juncker's promise.

Civil society continues to [wonder](#) how the European Commission managed to identify progress in these areas when there was ample [evidence](#) of harassment and illegitimate pressure on judges, irregularities and [political dependencies](#) at Bulgaria's Supreme Judicial Council, and overall impunity of politicians. The findings of the European Commission seem to contradict a [report](#) on judicial independence by the Council of Europe, reports by the [Freedom Barometer](#), the [Nations in Transit](#) report by Freedom House, an [opinion](#) by *Magistrats Européens pour la Démocratie et les Libertés* (MEDEL), etc.

Challenging the Queen of Hearts with a Justice Scoreboard

On 26 April 2019, the Commissioner for Justice, Vera Jourova, accidentally challenged the Queen of Hearts. She presented a [Justice Score Board](#) which contained various data, including statistics on the perception of judicial independence in EU Member States. It was established that 58% of Bulgarians perceived the independence of courts as "bad" or "fairly bad", making Bulgaria the third most pessimistic country about judicial independence in the EU. Commissioner Jourova [said](#) that in her opinion, the CVM would not be lifted by the end of the Juncker Commission's term.

Shortly after, when asked about Jourova's comments, Bulgaria's Prime Minister Boyko Borissov seemingly [lost his nerve](#) on live television: "First of all, she is from a different political family. How trustworthy will it be if [Bulgaria's Commissioner for Digitalization] Mariya Gabriel takes a stand today and tells off the Czech Republic for the billionaires who have a lot of money there?" In response, the journalist exclaimed: "But Mariya Gabriel is the Commissioner for Digital Policy while Jourova is the Commissioner for Justice!" Borissov was not impressed: "So what if she is the Commissioner for Digital Policy? She will say, for example, that these billions which have been accumulated in private hands throughout the years impede digital development in the Czech Republic and that is why Bulgaria is more advanced than them. Would they quote Mariya Gabriel in the Czech Republic? ... Mrs. Jourova has been to Bulgaria many times. She is from the liberals. They are our opponents at the moment because of the [European] elections. DPS are from the liberals. She comes and says this is her personal opinion. However, one week before that the personal opinion of Timmermans who is responsible for the monitoring was that certain steps should be completed by June [and the CVM would be lifted]."

Indeed, Jourova belongs to ALDE and Bulgaria's governing party GERB belongs to the EPP. This may as well have been the first time that Commissioner Jourova publicly showed pessimism about Bulgaria's rule of law. However, considering Bulgaria's member of ALDE (DPS) is a [behind the curtain partner](#) of the current government as evidenced by the way they vote in Parliament, one may reasonably

suspect Commissioner Jourova shaped her opinion by reading the Justice Scoreboard rather than by considering ALDE's election strategy.

What is more striking in Borissov's comments, however, is the reference to a meeting with Commissioner Frans Timmermans who held views opposite to Jourova's opinion. This, of course, takes us to the controversial reform proposed by Minister Kirilov which appears to have been discussed at the meeting with Timmermans.

A Curious Meeting, an Ill-Intentioned Reform

On 16 April 2019, Commissioner Timmermans met with Bulgaria's General Prosecutor Sotir Tsatsarov. Media [reported](#) that Timmermans said "he was encouraged by the fact that the Chief Prosecutor had promised implementation of the recommendations under [CVM]". On the following day, Tsatsarov [announced](#) that "the European Commission 'strongly support[ed]' the idea of setting up a special investigative procedure for the three major figures in the Bulgarian judicial system. These are the Chief Prosecutor and the presidents of the two supreme courts (the Supreme Court of Cassation and the Supreme Judicial Council)."

It has already been pointed out that the [proposed reform](#) is a "covert attack on Bulgarian judicial independence disguised as mere implementation of the CVM and ECtHR recommendations". Bulgaria has a longstanding systemic problem with the omnipotence and lack of accountability of the General Prosecutor. The issue was recognized by the ECtHR in its decision *Kolevi v Bulgaria* (2009). The claimants [argued](#) that "... given the centralized structure of the Bulgarian prosecution system, based on subordination, its exclusive power to bring charges and the procedural and institutional rules allowing full control by the Chief Public Prosecutor over every investigation in the country ... it was practically impossible to conduct an independent investigation into circumstances implicating him ...". The Court [observed](#): "... as a result of the hierarchical structure of the prosecution system and, apparently, its internal working methods, no prosecutor would issue a decision bringing charges against the Chief Public Prosecutor. This appears to have been due to the fact that the Chief Public Prosecutor and high-ranking prosecutors have the power to set aside any such decision taken by a subordinate prosecutor or investigator."

To this day, Bulgaria has not complied with *Kolevi* despite numerous reminders by the Committee of Ministers of the Council of Europe. *Kolevi* is also [mentioned](#) in Bulgaria's latest CVM report along with the clarification that there are no "effective mechanisms for the investigation of a serving Prosecutor General".

The current proposed reform, as it emerges from [media reports](#), aims at allowing the investigation of the President of the Supreme Court of Cassation, the President of the Supreme Administrative Court, and the General Prosecutor as well as their removal from office upon a decision by the Supreme Judicial Council. The investigation would be carried out by a prosecutor. There is also a catch – to take

such a decision, the Supreme Judicial Council should receive a proposal either by the Minister of Justice or by three members of the Supreme Judicial Council.

Multiple issues seem to arise in light of the Bulgarian context:

1. Both the President of the Supreme Court of Cassation and the President of the Supreme Administrative Court are accountable before the Supreme Judicial Council, unlike the General Prosecutor. Because of the structure of the Supreme Judicial Council, the General Prosecutor exercises a substantial influence over it. Neither the Council of Europe, nor the European Commission have raised awareness of the need of a special procedure for the investigation of the two highest-ranking judges. On the contrary, the Council of Europe has [identified](#) “tendencies to limit the independence of the judiciary made through attempts to politicize the judicial councils and the courts”.
2. Bulgaria’s Prosecutor’s Office has an entirely vertical structure, also known as a “Stalinist” structure, where all decisions depend on the General Prosecutor. The proposed reform does not correct this structure and does not create checks and balances. It provides an opportunity for a prosecutor subordinate to the General Prosecutor to investigate the two highest-ranking judges and the General Prosecutor. An objective investigation into wrongdoings of the General Prosecutor seems thus impossible.
3. As mentioned above, the Supreme Judicial Council is highly politicized, which raises concerns that the proposed procedure could be abused.
4. The prosecutorial college of the Supreme Judicial Council has 11 members, 5 of which are directly subordinate to the General Prosecutor. Any three of them could propose the removal and investigation of the two highest-ranking judges.
5. The reform is proposed after [multiple attempts](#) to intimidate and impeach the President of the Supreme Court of Cassation.

Considering the above, it seems curious that Commissioner Timmermans would discuss the implementation of CVM recommendations with the General Prosecutor rather than with Bulgarian legislators and government representatives. It is even “curiouser”, to quote *Alice’s Adventures in Wonderland* once again, that Timmermans would express approval of measures which clearly do not address the systemic issues identified in *Kolevi*. On the contrary, one may argue these measures fit the definition of post-accession hooliganism developed by Venelin Ganev in his [article](#) “Post-Accession Hooliganism: Democratic Governance in Bulgaria and Romania after 2007” because their underlying logic is to enhance the dysfunctionality of Bulgaria’s justice system.

“Would you tell me, please, which way I ought to go from here?”

Ultimately, while pretending to take measures to comply with the CVM benchmarks, Bulgaria is strengthening and developing an autocratic foundation and creating more tools for the harassment of judges. Commissioner Timmermans seems to be turning a blind eye to this charade for now. In turn, Commissioner Jourova challenged the Queen of Hearts accidentally and it is unclear if she will take a firm stand later on. Juncker made his promise to lift the CVM in 2016, so one may suspect there are political negotiations to determine what a sufficient consideration for this promise currently is.

It is also important to clarify that this is not the first time the European Commission has encouraged unhealthy reforms in Bulgaria – the list is rather long and merits a separate article. In that light, it seems crucial to ask where we ought to go from here. I would argue that the Juncker Commission has contributed to the rule of law decline in Bulgaria through both actions and omissions. I hope they wake up just like Alice does at the end of the book. However, considering how the same Commission mishandled the rule of law crises in Hungary and Poland, it is difficult to be optimistic.

To paraphrase the words of the King subjected to abuse by the Queen in *Alice’s Adventures in Wonderland*, one day, Bulgaria will have to “[b]egin at the beginning ... and go on till [it] comes to the end” of a proper reform of the justice system.

